



BILLING CODE: 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration

ACTION: Notice of Final Action: Granting Class Waiver of the Nonmanufacturer Rule for Commercial-Type Ovens, Ranges, and Gas ranges as listed under the North American Industry Classification System (NAICS) code 333318 (Other Commercial and Service Industry Machinery Manufacturing).

SUMMARY: The U. S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for Ovens, commercial-type, Ranges, commercial-type, and Gas ranges, commercial-type, Product or Service Code (PSC) 7310 (Food Cooking, Baking, and Serving Equipment), under NAICS code 333318 (Other Commercial and Service Industry Machinery Manufacturing). The basis for the waiver is that there are not two or more small business manufacturers that have been awarded or have performed a contract to supply this class of products to the Federal Government within the past 24 months, or that have submitted an offer on a solicitation for this class of products within that time frame. The effect of this waiver is to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Participants in SBA's 8(a) Business Development (BD) Program, or Women-Owned Small Business (WOSB) concerns.

EFFECTIVE DATE: This waiver is effective on the date this notice is published.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Halstead, Procurement Analyst, by telephone at (202) 205-9885 or e-mail at edward.halstead@sba.gov.

SUPPLEMENTARY INFORMATION:

Sections 8(a)(17) and 46 of the Small Business Act (the Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations require that recipients of Federal supply contracts set-aside for small businesses, SDVO small businesses, WOSB concerns, or Participants in the SBA's 8(a) BD Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. See 13 CFR 121.406(b), 125.15(c), 127.505. Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the Nonmanufacturer Rule for any "class of products" (known as a "class waiver") for which there are no small business manufacturers or processors available to participate in the Federal market. In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). SBA defines "class of products" as an individual subdivision within a NAICS Industry Number as established by the Office of Management and Budget in the NAICS Manual. 13 CFR 121.1202(d). In addition, SBA uses PSCs to further identify particular products within the NAICS Code to which a waiver would apply. SBA may then identify a specific item with a PSC and NAICS code to which a class waiver would apply.

SBA received a request to waive the Nonmanufacturer Rule for commercial ovens and broilers, PSC 7310, under NAICS code 333319 (Other Commercial and Service Industry

Machinery Manufacturing). (Note: On October 1, 2012, the NAICS code for Ovens, commercial-type, manufacturing, Ranges, commercial-type, manufacturing and Gas ranges, commercial-type, manufacturing changed from 333319 to 333318.)

On May 22, 2013, SBA published in the Federal Register a notice of intent to waive the Nonmanufacturer Rule for the above-listed class of products. 78 FR 12108. SBA announced in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In addition, SBA used the Dynamic Small Business Search (DSBS) database to conduct independent market research. This research did not reveal any small business manufacturers that participated in the Federal market during the previous 24 months.

In response to this notice, SBA received two comments. One respondent, a small business commercial appliance equipment dealer, claimed their market research found no small business manufacturers of this type of equipment that had conducted business with the Federal government within 24 months prior to June 1, 2013. Both respondents supported the granting of a class waiver of the Nonmanufacturer Rule for commercial-type ovens, ranges, and gas ranges. Both respondents stated that a class waiver of the Nonmanufacturer Rule would increase set-aside contract opportunities for all small businesses in an industry dominated by large businesses.

SBA considered all of the comments submitted, and after conducting thorough market research analysis, has concluded that there are no small business manufacturers of Commercial-type Ovens, Ranges, and Gas ranges. As a result, SBA is granting a class waiver of the Nonmanufacturer Rule for Commercial-type Ovens, Commercial-type Ranges, and Commercial-Type Gas ranges, under PSC 7310, NAICS Code 333318. The effect of this class waiver is to

allow otherwise qualified small businesses to supply the products of other than small manufacturers or processors on intended small business set-aside contracts. However, it must be emphasized that this class waiver of the Nonmanufacturer Rule does not waive other legal requirements applicable to Government procurements, such as the Buy American Act and the Trade Agreements Act.

Judith A. Roussel,
Director, Office of Government Contracting.
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